IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 455 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DADBHAI MATRABHAI - Petitioner(s)

Versus

EXECUTIVE ENGINEER & 1 - Respondent(s)

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Appearance :
MR VAISHNAV for Petitioner.
GOVERNMENT PLEADER for Respondent(s) : 1,
MR SP HASURKAR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 19/09/2005

ORAL JUDGMENT

The petitioner has retired from service of the department since February, 1994 and is required to continue this legal battle for getting appropriate amount

of gratuity. The petitioner was initially appointed as a daily rated labourer (Mazdoor) with effect from 25-5-1972 and was serving on the muster roll as a daily rated labourer. Subsequently, he was given status of work charge labourer from May, 1985 and he continued as a work charge labourer upto the year 1994 and since he had reach the age of superannuation he was relieved from the said post in the year 1994. At the time of retirement, the petitioner was paid gratuity amount of Rs.11,745/- but as according to the petitioner, he was entitled to get gratuity amount of Rs.21,196.15 ps., the petitioner approached the controlling authority under the Payment of Gratuity Act, 1972 by filing application No.30/1994 in order to get the difference of amount of gratuity. Before the controlling authority, it was the case of the petitioner that while calculating the amount of gratuity entire service rendered by the petitioner since May 1972 should be considered while the department has considered the services of the petitioner from the date on which he became work charge labourer. As per the say of the petitioner, if the entire service of the petitioner is calculated for payment of gratuity, he would have been entitled to get gratuity amount to the tune of Rs.21,196.15 ps., as against that he was paid only Rs.11,745/-. The petitioner, therefore, approached the

controlling authority in order to get the difference of the said amount. The controlling authority has decided the application of the petitioner and directed the department to pay the petitioner an amount of Rs.8187/- with the amount of Rs.100/- as cost within a period of 30 days from the date of passing the order. The controlling authority has also directed the department to pay 10% simple interest on the aforesaid amount of Rs.8,187/-.

Against the order of the controlling authority, the department preferred an appeal being Appeal No.60 of 1995 before the appellate authority. The appellate authority came to the conclusion that since the petitioner has approached the controlling authority for getting pension and gratuity amount and since the petitioner was working as a work charge labourer in the department, he may be considered as a Government servant and in that view of the matter, the controlling authority had no jurisdiction to entertain the application of the petitioner. Accordingly on the ground of jurisdiction the appellate authority has allowed the said appeal by setting aside the order of the controlling authority. The appellate authority has also relied upon some circulars for coming to the conclusion that if an employee is working in

public works department as a work charge labourer, he should be considered as a Government employee. This order of the appellate authority is impugned in the present petition at the instance of the petitioner.

Mr.Vaishnav, learned advocate for the petitioner submitted that neither before the controlling authority nor before the appellate authority, the department has taken care to represent its case and appellate authority has on its own without even showing the circular to the petitioner has come to the conclusion that the petitioner was a Government servant. Mr.Vaishnav further submitted that at the relevant time the petitioner was serving as a labourer on muster roll, i.e., from 1972 to 1985, and that period is required to be considered as continuous service of the petitioner for the purpose of payment of gratuity and, therefore, the controlling authority has rightly considered the period during which the petitioner has worked as a labourer (from 1972 to 1985) for giving him benefit of gratuity. Mr.Vaishnav also submitted that when before the appellate authority, the department had not remained present, the appellate authority should have dismissed the mater for default instead of allowing it in absence of the appellant and that too by considering the circular which was not part and parcel of the

proceedings. Mr.Vaishnav submitted that the petitioner is a retired person and is in a very bad economic position and is required to suffer for no fault on his part.

On the other hand, Mr.Hasurkar, has submitted that it is true that neither before the controlling authority nor before the appellate authority, representative of the department was present. He, however, submitted that the appellate authority on its own has reached to the conclusion that the controlling authority under the Act had no jurisdiction to decide the dispute in question and, therefore, the order of the appellate authority is not required to be interfered with.

In my view, since before the appellate authority, no representative of the appellant (respondent herein) was present and since the authority has considered a circular, which was not even on record, for coming to the conclusion that the petitioner herein was a Government servant, it would be just and proper to remand the matter back to the appellate authority to pass appropriate order after giving an opportunity to the representative of the respondent to submit its case. Mr.Hasurkar, has assured the Court that the representative of the respondent shall remain present before the appellate authority to assist

the appellate authority on the factual and legal aspect of the case.

Since the appellate authority has decided the case ex-parte, in absence of the appellant, by taking cognizance of some circulars, the matter is sent back to the appellate authority for giving fresh hearing to both the sides. Whether the petitioner can be said to be a Government servant or whether he is entitled to get protection of Payment of Gratuity Act is the question which the appellate authority has to decide after hearing both the sides and as per the circulars of the Government in this behalf. In case, the appellate authority comes to the conclusion that the controlling authority under the Act has no jurisdiction to decide the question, it will be open to the petitioner herein to take appropriate proceedings before appropriate forum in connection with the subject matter. The matter is accordingly sent back to the appellate authority for taking a fresh decision on the appeal, since the respondents have not remained present before the controlling authority as well as before the appellate authority.

Since the department has shown total negligence by not remaining present before both the authorities and

because of which the petitioner is required to suffer for no fault on his part, the respondents are directed to pay cost of Rs.5,000/- to the petitioner within a period of two weeks from today. Such amount of cost may be deposited before the controlling authority and on such deposit the petitioner shall be entitled to withdraw the same unconditionally. Mr.Hasurkar, learned AGP, has assured the Court that such amount of cost will be deposited before the controlling authority as directed by this Court. The appellate authority before taking the matter for hearing should ensure that amount of cost is paid to the petitioner and only thereafter, the appellate authority shall decide the appeal. The appellate authority may decide such appeal as expeditiously as possible and latest by 31st December, 2005.

Accordingly, this petition is allowed to the aforesaid extent by remanding the matter to the appellate authority and the impugned order at Annexure-B dated 30-10-1996 is quashed and set aside. Rule is made absolute accordingly with a direction to pay Rs.5,000/- as cost to the petitioner.

(P.B.MAJMUDAR, J.)

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